

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7122 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ARJANDAS RAMCHANDRA SAVLANI

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner
None preset for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/97

ORAL JUDGEMENT

#. Challenge has been made by the petitioner to the award of the Labour Court, Baroda, passed in Reference (LCB) No.52 of 1981 decided on 13.6.85 to the extent where the petitioner has not been granted the backwages.

#. The petitioner was taken as a Badli-Driver and on 12.6.78, one accident has been committed by him. The petitioner's services as Badli-Driver came to be

terminated on 14.6.78. He raised industrial dispute and reference has been made for the same to the Labour Court at Baroda. The Labour Court, Baroda, under its award dated 13th June 1985 found the termination of services of the petitioner to be illegal on the ground that no notice or opportunity of hearing has been given to him and further no enquiry has been held, but the backwages were not awarded to the petitioner.

#. To deny backwages to the petitioner, the Labour Court, as what the learned counsel for the petitioner stated, has recorded three reasons, namely, (i) the petitioner was only a badli-workman, (ii) he had hardly 25 days' service to his credit as badli-workman and (iii) as he was a driver, it is difficult to accept that he would not have got employment elsewhere. The learned counsel for the petitioner contended that none of the grounds is germane to the issue which has been raised by the petitioner before the Labour Court. It has next been contended that denial of backwages on the grounds aforesaid is wholly arbitrary and unjustified.

#. I do not find any substance in any contentions raised by learned counsel for the petitioner. The fact that the petitioner was only having 25 days' service as a badli workman certainly is a relevant consideration in the matter of grant of backwages to the petitioner. The petitioner's services came to be terminated on 14th June 1978, but without any fault on the part of respondent, the matter remained pending and finally the award has been made on 13th June 1985. It is our system that delay occurs in deciding the matters but at the same time to award backwages to the workman, for a period of seven years, who had to his credit, hardly 25 days' services as badli workman, is not justified. There is yet another aspect of the matter that the petitioner being only a badli-workman would not have got regular employment in the respondent-Corporation. Only as and when some regular driver has not come on duty, he would have got the employment and it is very difficult to say that during the period of seven years, for which the petitioner is claiming backwages, for how many days he would have been given employment. The last reason given by the Labour Court to deny backwages to the petitioner cannot be said to be perverse. It is true that the respondent-Corporation has not taken a plea of gainful employment of the petitioner and it is also equally true that no evidence has been produced on record of the Labour Court by the respondent in respect of gainful employment of the petitioner, but at the same time looking to the fact that the petitioner was a driver, the

inference drawn by the Labour Court, that the petitioner would not have got employment elsewhere is difficult to believe, cannot be said to be perverse or arbitrary. It is not difficult for a driver to get the employment and equally it is true that it is too difficult for the Corporation to know about the gainful employment of the petitioner. So the Labour Court has taken an objective and realistic approach in the matter and in view of the fact that the petitioner was a driver, possibility of getting employment elsewhere cannot be said to be irrelevant or extraneous.

#. Taking into consideration the totality of the facts of this case, the grounds given by the Labour Court for denying the backwages to the petitioner cannot be said to be irrelevant or extraneous to the extent where this Court should interfere in the matter, sitting under Article 227 of the Constitution. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)